



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2012-0386]

RIN 1625-AA08

Special Local Regulation; Kelley's Island Swim, Lake Erie;
Kelley's Island, Lakeside OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent Special Local Regulation on Lake Erie, Lakeside, Ohio. This regulation is intended to regulate vessel movement in portions of Lake Erie during the annual Kelley's Island Swim. This special local regulated area is necessary to protect swimmers from vessel traffic.

DATES: Comments and related materials must be received by the Coast Guard on or before [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2012-0386 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S.
Department of Transportation, West Building Ground Floor, Room
W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between
9 a.m. and 5 p.m., Monday through Friday, except Federal
holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four
methods. See the "Public Participation and Request for
Comments" portion of the SUPPLEMENTARY INFORMATION section
below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on
this proposed rule, call or e-mail ENS Benjamin Nessia,
Response Department, MSU Toledo, Coast Guard; telephone
(419)418-6040, e-mail Benjamin.B.Nessia@uscg.mil. If you have
questions on viewing or submitting material to the docket,
call Renee V. Wright, Program Manager, Docket Operations,
telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by
submitting comments and related materials. All comments
received will be posted without change to

<http://www.regulations.gov> and will include any personal information you have provided.

Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2012-0386), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when the comment is successfully transmitted; a comment submitted via fax, hand delivery, or mail, will be considered as having been received by the Coast Guard when the comment is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu, select "Proposed Rule" and insert "USCG-2012-0386" in the "Keyword" box. Click "Search"

then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2012-0386" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual

submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

Basis and Purpose

Each year an organized swimming event takes place in Lake Erie in which individuals swim the four miles between Lakeside and Kelley's Island, OH. The Captain of the Port Detroit has determined that swimmers in close proximity to watercraft and in the shipping channel pose extra and unusual hazards to public safety and property. Thus, the Captain of the Port Detroit has determined that establishing a Special Local Regulation around the location of the race's course will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Proposed Rule

To alleviate the extra and unusual hazards mentioned above, the Captain of the Port Detroit has determined that it is necessary to establish a Special Local Regulation. Accordingly, this proposed rule is intended to permanently establish a Special Local Regulation that coincides with the annual Kelley's Island Swim. The proposed Special Local Regulation will only be enforced annually on a single day in the second or third week in July from approximately 7:00 a.m. until 11:00 a.m. Due to the presence of swimmers in the water between Lakeside, OH and Kelley's Island, OH, the Coast Guard proposes that all vessels transiting the swim route shall proceed at a no-wake speed and maintain extra vigilance for people in the water. In addition, it is proposed that all vessels in the area yield right-of-way to swimmers and event safety craft. On-scene representatives may direct vessels to transit within or avoid certain areas during the race.

This proposed Special Local Regulation will encompass all navigable waters of the United States on Lake Erie, Lakeside OH, bound by a line extending from a point on land at the Lakeside dock at positions 41° 32' 51.96"N; 082° 45' 3.15"W and 41° 32' 52.21"N; 082° 45' 2.19"W and a line extending to Kelley's Island dock to positions 41° 35' 24.59"N; 082° 42' 16.61"W and 41° 35' 24.44"N; 082° 42' 16.04"W. The Captain of the Port will notify the affected segments of

the public of the enforcement of this proposed Special Local Regulation by all appropriate means. Means of notification will include an annual publication of a Notice of Enforcement (NOE) in the Federal Register. Also, means of notification may include Broadcast Notice to Mariners and Local Notice to Mariners.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any

novel legal or policy issues. The proposed Special Local Regulation will cover a relatively small area and exist for a relatively short time, and vessels will still be permitted to travel through the area, albeit with caution and reduced speed. Thus, restrictions on vessel movement within that particular area are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule will affect the following entities, some of which might be small entities: the owners and operators of vessels intending to transit or anchor in the portion Lake Erie, Lakeside, OH discussed above during the date and time of enforcement in the second or third week in July each year.

This proposed Special Local Regulation will not have a significant economic impact on a substantial number of small entities for the same reasons discussed in above Regulatory Planning and Review section.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact ENS Benjamin Nessia, Response Department, MSU Toledo, Coast Guard; telephone (419)418-6040, e-mail Benjamin.B.Nessia@uscg.mil. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

Taking of Private Property

This proposed rule will not cause a taking of private property or otherwise have taking implications under Executive

Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule will meet applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a Special Local Regulation and is therefore categorically excluded under figure 2-1, paragraph (34)(h), of the Instruction. During the annual permitting process for this swimming event an environmental analysis will be conducted to include the effects of this proposed Special Local Regulation. Thus, no preliminary environmental analysis checklist or Categorical Exclusion Determination (CED) are required for this proposed rulemaking action. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and record

keeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add § 100.921 Kelley's Island Swim, Lake Erie, Lakeside, OH.

(a) *Regulated Area.* The regulated area includes all U.S. navigable waters of lake Erie, Lakeside, OH, bound by a line extending from a point on land at the Lakeside dock at positions 41° 32' 51.96"N; 082° 45' 3.15"W and 41° 32' 52.21"N; 082° 45' 2.19"W and a line extending to Kelley's Island dock to positions 41° 35' 24.59"N; 082° 42' 16.61"W and 41° 35' 24.44"N; 082° 42' 16.04"W. (Datum: NAD 83).

(b) *Special Local Regulations.* The regulations of §100.901 apply. Vessels transiting within the regulated area shall travel at a no-wake speed and remain vigilant for swimmers. Additionally, vessels shall yield right-of-way for event participants and event safety craft and shall follow directions given by event representatives during the event.

(c) *Enforcement Period.* These Special Local Regulations will be enforced annually on a single day in the second or

third week in July from 7:00 a.m. until 11:00 a.m. The precise date and times of enforcement will be published annually in the Federal Register via a Notice of Enforcement.

Dated: May 18, 2012

J. E. OGDEN
Captain, U. S. Coast Guard
Captain of the Port Detroit

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